Filed 5/23/19 Blasdell v. Space Exploration Technologies CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JASON BLASDELL, Plaintiff and Appellant, v. SPACE EXPLORATION TECHNOLOGIES, CORP., Defendant and Respondent.	B285998 (Los Angeles County Super. Ct. No. BC615112)

APPEAL from a judgment of the Superior Court of Los Angeles County. William F. Fahey, Judge. Affirmed.

Shegerian & Associates, Carney R. Shegerian and Jill P. McDonnell for Plaintiff and Appellant.

Orrick, Herrington & Sutcliffe, Lynne C. Hermle, Julia C. Riechert, Elizabeth R. Moulton and Brian P. Goldman for Defendant and Respondent.

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An avionics test technician sued his former employer for wrongful termination in violation of public policy and a jury returned a verdict for the employer. On appeal, the technician challenges dozens of the trial court's evidentiary rulings, assails several other rulings, and argues that the court's time limits on the presentation of evidence violated due process. None of his arguments has any merit or otherwise warrants disturbing the jury's verdict. Accordingly, we affirm the judgment.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *SpaceX*

Defendant Space Exploration Technologies, Corp. (SpaceX) develops and builds rockets. SpaceX does not sell its rockets; instead, it offers the *service* of launching cargo and personnel into space. In 2011, NASA became one of SpaceX's customers.

SpaceX's engineers develop parts for their rockets, and SpaceX's 30 to 40 avionics test technicians subject parts with electronic components to a battery of tests aimed at assessing each part's functionality, visual appearance and resistance to the rigors of space flight (so-called "shock testing"). The engineer responsible for developing each part, sometimes with the aid of technical writers, drafts written instructions as to how each test should be conducted. Following these written instructions, the technicians "perform[] [the] test" and "record[] [the] test results." If a technician encounters a problem during testing, he or she may (1) file an "issue ticket" detailing a problem with the part or the written instructions, or (2) make a proposed "'redline'" correction to the instructions. The responsible engineer then decides what, if anything, to do with that feedback. All testing, feedback and responses are tracked in a database called the

"WARP Drive." Once a part passes all tests in the avionics lab, it is subjected to further testing by SpaceX's quality assurance personnel and by other SpaceX personnel once that part is combined with other component parts.

SpaceX has promulgated an ethics policy for its employees. The policy states that SpaceX "provides only complete, accurate and truthful information to its customers" and the company "[d]oes not make false statements." The policy further provides that "[d]isregard of the law will not be tolerated."

B. *Plaintiff's employment with SpaceX*

On November 1, 2010, Jason Blasdell (plaintiff) started working in SpaceX's avionics lab as an avionics test technician. His employment was "at will."

Although plaintiff started out as a well-regarded employee, that began to change in late 2011. Around that time, plaintiff started to find that many of the engineers' written instructions for testing parts could not be followed as written; the deficiencies were so bad, plaintiff believed, that they required him to file issue tickets and to "stop most of the work that [he] was working on." Plaintiff's newfound concern greatly slowed his productivity. While most avionics test technicians completed anywhere from one to seven tests per shift, plaintiff was barely able to complete one and was rapidly falling behind in his assignments. He dropped to the "bottom 10 percent" of test technicians.

As plaintiff's supervisors would urge him to be less "fixated" on the "minutiae" of the instructions, plaintiff would become "aggressive" and "loud" and sometime raise his voice. He even told his supervisors that *his* "main job was to watch over" and "monitor[]" the supervisors.

Toward the end of the summer of 2013, plaintiff engaged in conduct that ultimately resulted in one of his supervisors issuing him a verbal warning. That supervisor had been instructing other avionics test technicians on how to test a particular part using the written instructions when plaintiff interrupted and, in an "insubordinate and disrespectful" tone, told the supervisor that the instructions were deficient because they did not say how long the technician should wait for the test equipment to finish its analysis of the part. After the supervisor informed the other technicians that the instructions were fine, plaintiff later remarked to him that the supervisor's testing was "all bullshit" because he "wasn't following the [written] procedure." That supervisor reported the verbal warning, including that plaintiff was being "argumentative" and "insubordinate," to SpaceX's human resources staff. Another supervisor also informed human resources that plaintiff was being insubordinate, and further reported on plaintiff's lack of efficiency and productivity.

SpaceX fired plaintiff on April 1, 2014.

II. Procedural Background

A. *Complaint*

On April 1, 2016, plaintiff sued SpaceX for (1) wrongful termination in violation of public policy, (2) whistleblower retaliation in violation of Labor Code section 1102.5, and (3) defamation.[1] With respect to the first two claims, plaintiff alleged that SpaceX had a "culture" of (1) "ignoring procedures and deviating from protocols in order to pass tests through and not hold up production," and (2) "falsify[ing]" documentation "to

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1 Plaintiff also sued two of his former supervisors, but later dismissed them.

make it look like [technicians] followed specific testing requirements when in fact [they] had not."

B. *Summary judgment / adjudication*

SpaceX moved for summary judgment and/or summary adjudication on all of plaintiff's claims. In his opposition to the motion, plaintiff for the first time articulated that he was fired in retaliation for reporting a violation of federal law—namely, that any "deviat[ion] from . . . [the] written test procedures" amounted to "falsely representing that such procedures were being successfully completed," and hence violated title 18 of the United States Code, section 38.[2] Among other things, that provision makes it a crime to "falsif[y] or conceal[] a material fact concerning any . . . space vehicle part" or "make[] . . any materially false . . . record . . . concerning any . . . space vehicle part." (18 U.S.C. § 38(a).)

The trial court granted SpaceX's motion as to plaintiff's defamation claim, but denied the motion as to his remaining claims.[3] However, because the claim for wrongful termination in violation of public policy must be "specifically tethered" to a violation of "statutory or constitutional provision," the court ruled that plaintiff's remaining claims were invalid to the extent they were grounded in "complaints about personnel issues and work

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2 Plaintiff also for the first time alleged that the failure to follow the written testing instructions constituted unfair competition in violation of Business and Professions Code section 17200, but the trial court rejected this as a basis for proceeding and plaintiff does not challenge that ruling on appeal.

3 Plaintiff does not challenge the trial court's dismissal of his defamation claim on appeal.

place 'inefficiencies'"—that is, to the extent they "challenge[d] the nature, scope or correctness of the engineering protocols and procedures of SpaceX." Plaintiff's claims could go forward, the court reasoned, "solely on the issues of (1) whether plaintiff had a reasonable belief that SpaceX was falsifying test documents and (2) whether plaintiff was terminated for cause or for pretextual reasons."

C. *Trial*

1. *Length of trial*

The matter proceeded to a 10-day jury trial, and the evidence was presented over seven days.

2. *Scope of trial*

Consistent with its earlier ruling on SpaceX's summary judgment / adjudication motion, the court drew a distinction between evidence regarding any failures to follow SpaceX's "internal policies and procedures" and evidence showing the falsification of documentation regarding test results; the court ruled that the former was not "relevant," while the latter was. As to evidence of falsification of documentation regarding test results, the court ruled that plaintiff could present evidence showing that *he* had personally falsified such documentation or had personally witnessed other test technicians doing so, but could not present evidence that other technicians had falsified documentation based solely on plaintiff's review of those other technicians' testing results as reported in the WARP Drive. The court imposed this limitation because (1) plaintiff did not have personal knowledge of what actions the other technicians had performed in order to obtain the test results reported in the WARP Drive, such that any opinion he offered regarding "falsification" was impermissible, and (2) plaintiff's testimony

regarding the contents of the WARP Drive was impermissible secondary evidence.

3. *Presentation of evidence*

Consistent with these rulings, plaintiff testified that (1) he witnessed four other SpaceX technicians complete tests on parts without precisely following the written test instructions and instead "using their own judgment and experience to change the way the test was performed," which in his view rendered "false" the documentation of the tests being "pass[ed]"; (2) he complained about such "falsification" and "glaring errors in . . . document[ation]" to his superiors and to human resources personnel at SpaceX; (3) he was pressured by his supervisors to similarly "falsif[y]" documentation; and (4) he succumbed to that pressure and "falsified" documents in the last 30 days of his employment at SpaceX because he "pass[ed]" a part that had the word "QUAL" etched on it rather than stamped on it in orange paint. Plaintiff also testified that, in March 2014, someone else signed off on a test that he had halted using his initials. As part of its case, SpaceX clarified with plaintiff what he meant by "falsification" of documentation—namely, that a particular test "could not be performed" by looking solely to the written instructions; that technicians were "deviat[ing]" from the instructions by "us[ing] their judgment and experience to interpret" them; and that the technicians were "sign[ing] off" on a part without "not[ing]" how they had deviated from the instructions. Under plaintiff's definition, "falsification" did *not* involve reporting any inaccurate test results. SpaceX also introduced evidence that none of the four technicians plaintiff named had ever falsified any test documentation; that plaintiff did not complain of "falsification" of documents to two of his

immediate supervisors; and that *none* of his supervisors had ever pressured plaintiff to falsify test documentation.

4. *Dismissal of claim and jury instructions*

Immediately before closing arguments, plaintiff dismissed with prejudice his claim for retaliation under Labor Code section 1102.5.

On the remaining claim for wrongful termination in violation of public policy, the trial court instructed the jury that "[i]t is a violation of public policy to discharge an employee" (1) "if he reported a reasonably based suspicion that his employer was violating the law" or (2) if he "refuse[d] to violate the law." The court explained that plaintiff had the burden of proving that (1) he was employed by SpaceX; (2) that SpaceX discharged him; (3) that his "reporting of his reasonably based suspicion of a violation of law and/or his refusal to violate the law was a substantial motivating reason for his discharge," and (4) his discharge "caused him harm."[4] Borrowing from title 18 United States Code section 38, the court then instructed that "[i]t is against the law to knowingly and with intent to defraud a third party . . . to" (1) "falsify or conceal a material fact concerning any . . . space vehicle part," (2) "make any materially false representation concerning any . . . space vehicle part," or (3) "to make or use any materially false writing, entry, . . . document [or] record . . . concerning any . . . space vehicle part."

5. *Jury verdict*

By special verdict, the jury found by a 9-to-3 vote that plaintiff's "reporting of his reasonabl[y] based suspicion of a

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4 The jury was instructed that the parties agreed plaintiff had proven the first two facts.

violation of a law and/or his refusal to violate the law" was not "a substantial motivating reason for his discharge" from SpaceX.

D. *Post-trial matters*

Plaintiff moved for a new trial on several grounds, but the trial court denied his motion.

After the court entered judgment, plaintiff filed this timely appeal.

DISCUSSION

I. Evidentiary Challenges

We review challenges to the trial court's evidentiary rulings for an abuse of discretion. (*People v. Powell* (2018) 5 Cal.5th 921, 961.) Where a party challenges the exclusion of evidence, a single viable basis for exclusion is sufficient to affirm the exclusionary ruling. (E.g., *Lockheed Litigation Cases* (2004) 115 Cal.App.4th 558, 565.)

A. *Relevance-based challenges*

Plaintiff argues that the trial court erred in excluding as irrelevant (1) evidence of his complaints to management that SpaceX test technicians were not complying with SpaceX's internal mandate that technicians strictly follow written test instructions, and (2) evidence that SpaceX did not conduct an internal investigation of his complaints. Evidence is "relevant" if it has "any tendency in reason to prove or disprove *any disputed fact that is of consequence to the determination of the action*." (Evid. Code, § 210, italics added.) Irrelevant evidence is inadmissible. (*Id.*, § 350.) In assessing the propriety of the trial court's relevance rulings, we necessarily ask two questions: (1) Did the trial court correctly determine which facts were "of consequence to the determination of the action," and (2) did the court correctly apply its determination to the evidence at issue?

1. *Violations of SpaceX's internal rules requiring strict compliance with written test instructions*

a. Facts of consequence

An employer who hires an employee "at will" may discharge that employee for any reason *except* for "performing an act that public policy would encourage, or for refusing to do something that public policy would condemn." (*Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1090 (*Gantt*), overruled on other grounds, *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66 (*Green*); *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 172; Lab. Code, § 2922 [defining at-will employment].) To avoid "judicial policymaking," however, this limitation on discharging employees in violation of public policy is confined to public policies that (1) are codified in (and hence "tethered" to) a constitutional or statutory provision, (2) "inure[] to the benefit of the public," (3) are "fundamental" and "substantial" and (4) are "well-established." (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 889-890; *Gantt*, at p. 1095; *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1256 (*Turner*).)

In this case, plaintiff's claim for wrongful termination rests on the public policy condemning retaliation against an employee for reporting conduct that he "has reasonable cause to believe" constitutes "a violation of state or federal" law (Lab. Code, § 1102.5, subd. (b)), where the pertinent violation of law was the federal statutory prohibition on falsifying or concealing material facts or otherwise making materially false writings, entries, documents or records regarding space vehicle parts (18 U.S.C. § 38(a)). The public policy against retaliating against whistleblowers is sufficiently "fundamental" to support a claim for wrongful termination. (E.g., *Green*, *supra*, 19 Cal.4th at pp. 76-77 [so holding].)

However, just like a direct claim for retaliatory discharge under Labor Code section 1102.5, plaintiff's claim for wrongful termination in violation of the public policy against retaliatory discharge is also limited to discharge for reporting (1) conduct that actually violates the law or (2) conduct that plaintiff had "reasonable cause to believe" violates the law, which in this case is title 18 United States Code section 38. (Lab. Code, § 1102.5, subd. (b); *Green*, *supra*, 19 Cal.4th at p. 87 [wrongful discharge based on retaliation applies when an employee reports "an actual violation of law" or "for reporting his 'reasonably based suspicions' of illegal activity"]; *Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 138 [same]; *Barbosa v. IMPCO Technologies, Inc.* (2009) 179 Cal.App.4th 1116, 1122 [same].) Reporting "dissatisfaction" with, disagreement over or disobedience of "an employer's internal policies" and practices does not support a claim for retaliatory discharge (and hence does not support a retaliation-based claim for wrongful termination) because such dissatisfaction, disagreement or disobedience does not itself violate the law. (*Turner*, *supra*, 7 Cal.4th at p. 1257 ["The tort of wrongful discharge is not a vehicle for enforcement of an employer's internal policies"]; *Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1384-1385 (*Patten*); *Read v. City of Lynwood* (1985) 173 Cal.App.3d 437, 444-445.) This distinction between actionable claims for wrongful termination based on actual or reasonably perceived violations of the law and non-actionable claims based solely on violations of an employer's internal rules is an important one; without it, "the judiciary" would be "thrust . . . into micromanaging employment practices." (*Patten*, at p. 1385.)

Under this precedent, the trial court did not abuse its discretion in excluding as irrelevant evidence pertaining to SpaceX's technicians' failure to follow the company's "internal policies and procedures" requiring strict adherence to written test instructions.

b. Proper application of relevance ruling

As pertinent to this appeal, the trial court excluded as irrelevant the following 10 items of evidence because those items dealt solely with the alleged failure of SpaceX employees to follow SpaceX's internal procedures and had "nothing" to do with "issues of falsification" of documentation:

- Testimony regarding plaintiff's attendance at a "Lunch with Elon [Musk, SpaceX's chief executive officer]" in June 2011, where plaintiff raised the issue that "[the] written test instructions . . . could not be followed."
- *Exhibit 198.* This was an early June 2013 e-mail chain between plaintiff and SpaceX's president inviting her to visit the avionics testing lab, and recounting problems with "documentation workload" and "redundant data entry."
- Testimony regarding plaintiff's June 2013 meeting with SpaceX's president, where plaintiff showed her he was unable to obtain a passing test result on a camera part based on the written test instructions while other technicians had passed the part, and where the president allegedly responded, "Don't tell Elon [Musk]."
- *Exhibit 207.* This was a mid-June 2013 e-mail chain between plaintiff's supervisor and a member of higher management regarding higher management's visit to the avionics testing lab, which occurred at plaintiff's request.

- *Exhibit 210*. This was a late June 2013 e-mail chain between plaintiff and his supervisor in which plaintiff reports that he was "told by all of my managers to stop sending emails and stop rocking the boat."
- *Exhibit 253*. This was an August 2013 e-mail that plaintiff sent to himself regarding the verbal warning he received, and which addresses "incorrect" "procedures."
- *Exhibit 314*. This was an October 2013 e-mail from Musk to all SpaceX employees in which Musk indicates he "would like to try a more accessible approach to interact with people at SpaceX."
- *Exhibit 441*. This was a January 2014 e-mail chain between plaintiff and a human resources employee, in which plaintiff forwarded e-mails with SpaceX's president regarding "actual test lab efficiency problems"—namely, "too much redundant documentation," "pretending that test procedures are already accurate," and "technicians are pressured to deviate from policy."
- *Exhibit 460-1*. This was a January 2014 e-mail from plaintiff to Musk listing ten "key politic points" regarding "efficiency problems with the production line." Among these, plaintiff recommended that "test procedures" be "more accurate," and reported that test documentation is "still inefficient," that the "issue ticket system is awkward," and that "data entry" is "redundant."
- *Exhibit 507*. This was a March 2014 e-mail chain between plaintiff and his supervisor. The trial court admitted the portion in which plaintiff complains that "somebody used [his] initials to close out 3 shock functional tests after [he] specifically noted in [the] WARP [Drive] that [he] wasn't willing

to close them out yet," but excluded the portions regarding SpaceX's procedures for how approvals should be authorized in the WARP Drive system.

Because the excluded exhibits (or excluded portions of exhibits) dealt solely with violation of internal SpaceX policies or procedures, the trial court did not abuse its discretion in excluding them.

c. Plaintiff's arguments

Plaintiff offers what boils down to five arguments as to why the trial court should have nevertheless admitted evidence regarding violations of SpaceX's internal policies and procedures.

First, plaintiff contends that the violations of SpaceX's internal policies and procedures were relevant because they supplied him with "reasonable cause to believe" that SpaceX employees were "falsifying" material facts and making "materially false" "documents" in violation of title 18 United States Code section 38. Thus, plaintiff continues, violations of SpaceX's internal procedures and violations of the law were "intertwined."

We reject this contention as legally and factually invalid. It is legally invalid because California's protection of employees who make reports of what they have "reasonable cause to believe" is a "violation of" law provides whistleblower protection when they reasonably get the *facts* wrong, but does not provide protection when they get the *law* wrong because unilateral mistakes as to what the law is are not "reasonable." (See *Carter v. Escondido Union High School Dist.* (2007) 148 Cal.App.4th 922, 933-934 [anti-retaliation protections do not apply when employee reports a coach's use of protein shakes, which is not illegal]; *TRW, Inc. v. Superior Court* (1994) 25 Cal.App.4th 1834, 1853-1854 [anti-

retaliation protections do not apply when employee reports denial of attorney during administrative interview, which is not unconstitutional]; *DeSoto v. Yellow Freight Systems* (9th Cir. 1992) 957 F.2d 655, 658-659 [California's anti-retaliation protections do not apply when employee reports operation of trailers without registration papers, which is not illegal].) Plaintiff's contention that violations of SpaceX's internal policy requiring strict adherence to written test procedures are intertwined with his view that SpaceX was violating the law is also factually invalid. That is because at no point prior to his termination from SpaceX did plaintiff ever state or imply to his superiors at SpaceX that the "falsification" of documentation he complained of was *unlawful*. Accordingly, evidence showing that SpaceX was violating its own policies was not relevant to show the reasonableness of a belief in illegality that plaintiff did not hold at the time.[5]

Second, plaintiff asserts that his reports that SpaceX's internal procedures were being violated was relevant to prove that he was discharged for pretextual reasons—ostensibly, that he was fired for complaining about the violations of internal rules rather than fired for the reasons cited by SpaceX (that is, insubordination and lack of productivity). This assertion is without merit because *none* of these reasons for firing plaintiff (violation of internal rules, insubordination or lack of

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5 Plaintiff's trial testimony that he *now* believes the "falsification" of documents violates federal law does not fill this evidentiary gap because what matters is whether plaintiff was discharged for reporting what he reasonably believed to be violations of the law. (Lab. Code, § 1102.5, subd. (b); *McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 468-472.)

productivity) is protected by the statute prohibiting retaliatory discharge. Because "[t]he pertinent statutes do not prohibit lying" (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 360-361), the fact that SpaceX may not have been truthful about which one of several *permissible* grounds for firing plaintiff underlie its decision is of no moment. It does not breathe relevance into the evidence regarding violations of SpaceX's internal rules.

Third, plaintiff posits that the trial court excluded items of evidence merely because they did not include the proper "buzz words" (such as "illegality"). To be sure, in assessing whether a plaintiff was reporting unlawful activity, courts are to focus on the "conduct" reported rather than "the label attached to th[at] . . . conduct." (*Casella v. Southwest Dealer Services, Inc.* (2007) 157 Cal.App.4th 1127, 1138.) But the trial court was well aware of this principle, and specifically noted that it was evaluating the relevance of the various items of evidence without insisting upon the use of any "magic words." More to the point, the court focused on the conduct plaintiff reported in the excluded evidence and concluded that that conduct—namely, the failure to follow SpaceX's rules requiring strict adherence to written test instructions—was not relevant to proving a suspected violation of the pertinent federal statute. This was correct.

Fourth, plaintiff argues that the court mistakenly "conflat[ed] . . . materiality with relevance" and made admissibility contingent upon a showing of materiality. (*People v. Lewis* (2009) 172 Cal.App.4th 1426.) The court did no such thing. It concluded that evidence of violations of SpaceX's internal procedures was not *relevant*; again, this conclusion was correct.

Lastly, plaintiff's contention that the court erred in striking the portions of his complaint pertaining solely to violations of SpaceX's internal procedures under Code of Civil Procedure section 436 lacks merit. That provision empowers a court to "[s]trike out any irrelevant . . . matter" from a pleading. (Code Civ. Proc., § 436, subd. (a); *County of Los Angeles v. State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985, 1001.) In light of our conclusion that the court did not abuse its discretion in excluding as irrelevant evidence of violations of SpaceX's internal policies, the court acted well within its discretion in striking as irrelevant allegations mirroring that evidence. (*People v. Nelson* (2008) 43 Cal.4th 1242, 1265 ["Questions of relevanc[e] . . . have never been outside of judicial competence. Determining what evidence is and is not relevant is a hallmark responsibility of the trial judge . . . ."].)

2. *Evidence that SpaceX did not conduct any investigation in response to plaintiff's complaints*

a. Facts of consequence

To establish a claim for retaliatory discharge (and hence a claim for wrongful termination in violation of public policy based on the same), the plaintiff-employee must prove "a causal link" between the "protected activity" he "engaged in" and his subsequent discharge by the employer. (*Patten*, *supra*, 134 Cal.App.4th at p. 1384.) That "causal link" can be proven in part by evidence that the employer only half-heartedly investigated the unlawful behavior of which the employee complained because, the reasoning goes, the employer's lack of commitment to getting to the bottom of the unlawful behavior tends to show that the employer "did not value the discovery of the truth so much as a way to clean up the mess that was uncovered when [the plaintiff] made his complaint." (*Mendoza v. Western Medical*

Center Santa Ana (2014) 222 Cal.App.4th 1334, 1343-1344.) However, this principle does not apply when what the plaintiff reports to the employer is not conduct that an employer would understand to be unlawful behavior. (See *Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, 69 [retaliatory discharge is a valid claim only where the employer is "aware of the protected activities"].) The failure to investigate a violation of internal procedures does not somehow transform lawful behavior into unlawful behavior; thus, the failure to investigate in such a circumstance is not relevant.

In line with this precedent, the trial court ruled that SpaceX's failure to investigate plaintiff's complaints that other avionics test technicians were using their judgment and experience in interpreting test instructions rather than following those instructions strictly was not relevant because the complaints did not involve any unlawful conduct. This ruling was not an abuse of discretion.

b. Proper application of relevance ruling

As pertinent to this appeal, the trial court excluded (1) a portion of Exhibit 383, which was the handwritten notes of the SpaceX human resource staff member who met with plaintiff several times; and (2) the testimony of a legal expert who would have testified that SpaceX failed to follow standard practices in not investigating plaintiff's complaints. These specific rulings were consistent with the court's more general relevance ruling regarding the failure to investigate where what was reported was not a suspected violation of law. There was no abuse of discretion in excluding this evidence.

B. *Competence-based challenges*

Plaintiff argues that the trial court erred in excluding his testimony that SpaceX avionics test technicians were "falsifying" documents when that testimony was based on (1) plaintiff's inability to comply with the written test instruction for a particular part, and (2) the other technicians' ability to conclude that the part "passed" testing, as recorded by those technicians' entries in the WARP Drive.

Under the rules of evidence, a witness—whether a lay witness or an expert witness—cannot offer an opinion that is based on speculation. Although expert witnesses may base their opinions on facts of which they do not have personal knowledge (Evid. Code, §§ 702, subd. (a), 801, subd. (b)), their opinions may still not be based on speculation (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 771-772). And non-expert, lay witnesses may offer non-speculative opinions only if they are also "[r]ationally based on the perception of the witness"—that is, based on their senses. (Evid. Code, §§ 800, subd. (a), 170.)

Applying this law, the trial court did not abuse its discretion in precluding plaintiff from testifying that *other* technicians had "falsified" test documentation based solely on their entries in the WARP Drive. That is because the only way to know whether the other technicians "falsified" the test results is to know (1) what the instructions were that those technicians used, (2) the specific steps the technicians took in following, or not following, those instructions, and (3) the actual results produced by the testing equipment. Because plaintiff did not watch the other technicians perform the tests and because the WARP Drive entries did not document what the technicians did,

plaintiff had no way of knowing what specific steps they took in following (or not following) the instructions. Absent that proof, his conclusion that they "falsified" results is wholly speculative. Thus, the trial court properly excluded evidence of two meetings—specifically, (1) a mid-2013 meeting with SpaceX's president, and (2) a late 2013 or early 2014 meeting with Musk—at which plaintiff shared his speculative opinion regarding falsification with upper management. If the opinion itself is subject to exclusion on grounds of speculation, repeating that opinion to others does not make it less speculative or less subject to exclusion.

Plaintiff offers two arguments in response.

First, he asserts that his opinion was admissible to prove that he had "reasonable cause to believe" that the other technicians were "falsifying" test documentation. It was not, because an opinion based on speculation cannot give rise to a reasonable belief. (*Roddy v. Superior Court* (2007) 151 Cal.App.4th 1115, 1140 ["speculat[ion]" "does not support a reasonable belief"]; *People v. White* (1986) 183 Cal.App.3d 1199, 1209 ["wild speculation" is "far below the standard of 'reasonable belief'"].)

Second, plaintiff contends that he was sufficiently qualified to opine on whether the written instructions can or cannot be followed. This contention is irrelevant. Whether plaintiff was offering an expert or a lay opinion, it was subject to exclusion as speculative because its factual predicate—that is, what the other avionics test technicians did—was absent.

C. *Remaining evidentiary challenges*

Plaintiff further argues that the trial court erred in (1) not excluding evidence that he was taking medication for his

attention deficient / hyperactivity disorder (ADHD) that, as a side effect, could "cause psychotic behavior," and (2) not excluding his prior "misdemeanor" conviction to prove that plaintiff had lied on his job application to SpaceX and thus was less credible.[6]

1. *Plaintiff's medication*

The trial court did not abuse its discretion in refusing to exclude evidence that plaintiff was, during the time of his employment with SpaceX, taking a medication that could cause "psychotic behavior." This evidence was relevant (1) to prove that any mental distress plaintiff suffered was "caused by a preexisting mental condition" rather than his discharge, which was relevant because plaintiff was seeking general damages (*Vinson v. Superior Court* (1987) 43 Cal.3d 833, 839-840 [so holding]), and (2) to corroborate SpaceX's defense that plaintiff was discharged because he was, in fact, insubordinate.

Plaintiff assails this ruling with two arguments. First, he argues that the evidence of the possible side effect should have been excluded because the expert did not opine "to a medical certainty" that the side effect of psychotic behavior would occur. Because possible side effects are, by their nature, only *possible*, plaintiff is essentially arguing that experts may never testify about side effects. This is not the law. (*Finn v. G.D. Searle & Co.* (1984) 35 Cal.3d 691, 696 [expert may testify to possible side effect of drugs].) Second, plaintiff argues any probative value of the evidence is, ostensibly under Evidence Code section 352,

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6 Plaintiff also challenges one of the trial court's evidentiary rulings regarding a witness whose testimony bears only on damages. Because we find no reversible error regarding the jury's finding of no liability, any error in that evidentiary ruling pertaining to the damages element is by definition harmless.

substantially outweighed by the danger that the jury would view him as a "paranoid drug addict." We disagree, as the only testimony was that plaintiff was taking lawfully prescribed medications under the supervision of a medical professional.

2. *Plaintiff's criminal history*

We need not decide whether the trial court abused its discretion in not excluding plaintiff's prior misdemeanor conviction to prove that he had lied on his job application to SpaceX, and thus was less credible, because that evidence never came in before the jury. Instead, plaintiff testified—inconsistently with his counsel's representations prior to trial, we note—that he only had a prior "infraction" and that his denial of any prior "felony" or "misdemeanor" convictions on his job application was truthful. Plaintiff could not have been impeached—or, for that matter, prejudiced—on a ground that ultimately did not come before the jury.

II. Other Challenges to the Proceedings Below

Plaintiff raises four arguments as to why the trial court's other rulings denied him a fair trial.

A. *Time limits on presentation of evidence*

Plaintiff asserts that the trial court erred in setting time limits on the parties' presentation of evidence.

Trial courts have authority, both inherent and statutory, to place "reasonable" time limits on the presentation of evidence as long as those limits are "mindful that each party is entitled to a full and fair opportunity to present its case." (*California Crane School, Inc.* (2014) 226 Cal.App.4th 12, 21 (*Crane School*); Code of Civ. Proc., § 128; Evid. Code, §§ 765, subd. (a), 352.) In setting a time limit, the court is not bound by the parties' time estimates. (*Crane School*, at p. 19.) Instead, courts should (1) solicit trial

time estimates from the parties and "independently evaluate" those estimates "based on the arguments of the parties, the state of the pleadings, the legal and factual issues presented, the number of witnesses likely to testify, the court's trial schedule and hours, and the court's experience in trying similar cases," (2) set time limits in "court hours" rather than "court days" in order to give the parties "incentive to be diligent," (3) keep "[the parties] advised on a regular basis . . . of how much time each side" has remaining, and (4) be open to revising those time estimates "when a showing [is] made that more time was necessary." (*Id.* at pp. 20-24 (italics omitted); *People v. ConAgra Grocery Products Co.* (2017) 17 Cal.App.5th 51, 150-151 (*ConAgra*).) We review a trial court's setting and enforcement of time limits for an abuse of discretion. (*ConAgra*, at p. 148.)

The trial court did not abuse its discretion in setting time limits in this case. The court solicited the parties' trial estimates: Plaintiff initially estimated a 14- or 15-day trial, while SpaceX estimated a 7- to 10-day trial. Subsequent to those estimates, the court in ruling on SpaceX's summary judgment and/or adjudication motion dismissed plaintiff's defamation claim and also narrowed the scope of evidence relevant to prove plaintiff's wrongful termination and retaliation claims. Rather than set a time limit of seven court days for the trial, the court calculated the limit as 28 court hours (consisting of four hours of trial each day), and then split the time evenly between the parties—14 hours for each side. What is more, this time included only opening statements and the presentation of evidence; it did not include voir dire, bench conferences, jury instructions or closing arguments. The court gave the parties daily updates on their remaining time. The court also entertained plaintiff's request for

an additional 40 minutes of time to call himself as a rebuttal witness, but ultimately denied that request and plaintiff's later requests out of a concern for ensuring a level playing field and because plaintiff's shortage on time was due entirely to his prior "strategic decisions" regarding how to use his time. In sum, the trial court adhered to the principles set forth for the reasonable regulation of trial time.

Plaintiff offers three arguments to the contrary. He suggests that *any* time restrictions on his presentation of evidence violate due process. This is not the law. He next asserts that the trial court erred in not setting forth on the record its findings regarding why it was setting time limits. No case requires findings in advance, and the court here adequately set and enforced its time limits on the record. He lastly contends that the court was obligated to give him more time once the court ruled that SpaceX had "opened the door" to allow him to testify about "falsification" of test results he had personally observed (because plaintiff, for the first time at trial, was able to name the four other technicians he had observed). This contention lacks merit because the court ruled that the "door was open" mid-way through trial during plaintiff's case-in-chief; accordingly, plaintiff had ample opportunity to take advantage of the court's ruling. The trial court's denial of additional time for plaintiff to take the stand again on rebuttal (which plaintiff ultimately did) did not convert the court's otherwise reasonable time limits into an unconstitutional deprivation of due process.

B. *Mis-instruction of the jury*

Plaintiff next contends that the trial court committed instructional error because, on four occasions, the court commented to the jury during the trial that the "issue" for the

jury to "determine" was "whether there was falsification or not." This was error, plaintiff continues, because plaintiff could also prevail on his wrongful termination claim if he had "reasonable cause to believe" there was falsification; proof of *actual* falsification was not required. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1043.) We independently review claims of instructional error. (*Mize-Kurzman v. Marin Community College Dist.* (2012) 202 Cal.App.4th 832, 845.)

We conclude there was no error. The trial court's comments were made in the context of distinguishing proof of falsification that might violate the federal statute at issue from proof of violations of SpaceX's internal policies and procedures. More to the point, any ambiguity engendered by these mid-trial comments was clarified at the end of trial. In its final charge to the jury, the court correctly spelled out the elements of plaintiff's wrongful termination, including that plaintiff's claim may be supported by retaliation based on "his reasonably based suspicion of a violation of law and/or his refusal to violate the law." Indeed, the trial court wiped away any possible prejudice when it went on to specifically tell the jury that plaintiff "does not need to prove an actual violation of title 18 United States Code section 38. It suffices if he reported his reasonably based suspicions of illegal activity." And the special verdict form echoed plaintiff's ability to prevail based solely on his reasonable belief of a violation.

C. *Refusal to re-open discovery and/or continue the trial*

Plaintiff contends that the trial court made two discovery-related errors that prejudiced him at trial. We review discovery orders for an abuse of discretion. (*Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 881.)

First, plaintiff argues that the trial court erred in denying his *ex parte* motion and oral motions to re-open discovery to allow him to depose three of his former coworkers at SpaceX. Plaintiff's requests were properly denied as procedurally improper because they were not made by a noticed motion. (Civ. Proc. Code, § 2024.050, subd. (a).) Further, plaintiff offers no reasoned argument or citation to authority as to why these rulings were substantively wrong. His arguments are accordingly forfeited. (*People v. Harper* (2000) 82 Cal.App.4th 1413, 1419, fn. 4.)

Second, plaintiff contends that the trial court erred in denying his motion to compel the attendance of one of his former SpaceX managers at trial. SpaceX reported that the manager had suffered a "very severe stroke," but plaintiff responded by offering photographs and a video recording from a private investigator who had followed the manager around for three days. The trial court denied plaintiff's motion subject to SpaceX presenting a doctor's note attesting to the manager's condition and with the proviso that plaintiff could still introduce the manager's deposition testimony at trial. Plaintiff never challenged the doctor's note or offered the deposition testimony into evidence at trial; accordingly, plaintiff has forfeited the issue on appeal. (*Telles Transport, Inc. v. Workers' Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159, 1167 ["[A] party loses the right to appeal an issue caused by affirmative conduct or by failing to take the proper steps at trial to avoid or correct the error."]; Code Civ. Proc., § 2025.620, subd. (c)(2)(C) [use of deposition testimony at trial].)

D. *Post-verdict instruction to departing jurors*

After the jury's verdict was returned and recorded, the court instructed the jurors that their "deliberations [were]

completely secret" and not to "talk about" them with the lawyers. We need not plumb whether this was error because any error in that instruction could not have affected the verdict because (1) the verdict came *before* this instruction, and (2) any statements by jurors with regard to "the effect of" any "statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined" is inadmissible in any event (Evid. Code, § 1150, subd. (a)).

III. Cumulative Error

Plaintiff finally makes the argument that the dozens of errors he claims to identify collectively denied him due process. Because we assume only one instance of harmless error, there is no error to cumulate. (*People v. McWhorter* (2009) 47 Cal.4th 318, 377.)

DISPOSITION

The judgment is affirmed. SpaceX is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ